

**Chapter 312.**

**RULES GOVERNING RETAIL ACCESS**

**TO COMPETITIVE ENERGY SERVICES.**

**20 VAC 5-312-10. Applicability; definitions.**

A. These regulations are promulgated pursuant to the provisions of the Virginia Electric Utility Restructuring Act (§ 56-576 et seq. of the Code of Virginia) and to the provisions of retail supply choice for natural gas customers, § 56-235.8 of the Code of Virginia. The provisions in this chapter apply to suppliers of electric and natural gas services including local distribution companies and competitive service providers, and govern the implementation of retail access to competitive energy services in the electricity and natural gas markets, including the conduct of market participants. The provisions in this chapter shall be effective with the implementation of full or phased-in retail access to competitive energy services in the service territory of each local distribution company.

B. The following terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Affiliated competitive service provider" means a competitive service provider that is a separate legal entity that controls, is controlled by, or is under common control of, a local distribution company or its parent. For the purpose of this chapter, any unit or division created by a local distribution company for the purpose of acting as a competitive service provider shall be treated as an affiliated competitive service provider and shall be subject to the same provisions and regulations.

"Aggregator" means a person licensed by the State Corporation Commission that, as an agent or intermediary, (i) offers to purchase, or purchases, electricity or natural gas supply, or both, or (ii) offers to arrange for, or arranges for, the purchase of electricity or natural gas supply, or both, for sale to, or on behalf of, two or more retail customers not controlled by or under common control with such person. The following activities shall not, in and of themselves, make a person an aggregator under this chapter: (i) furnishing legal services to two or more retail customers or competitive service providers; (ii) furnishing educational, informational, or analytical services to two or more retail customers, unless direct or indirect compensation for such services is paid by a competitive service provider supplying electricity or natural gas, or both; (iii) furnishing educational, informational, or analytical services to two or more competitive service providers; (iv) providing default service under § 56-585 of the Code of Virginia; (v) conducting business as a competitive service provider licensed under 20 VAC 5-312-40; and (vi) engaging in actions of a retail customer, acting in common with one or more other such retail customers, to issue a request for proposal or to negotiate a purchase of electricity or natural gas supply, or both, for consumption by such retail customers.

"Billing party" means a person that renders a consolidated or separate bill directly to a retail customer for competitive energy services or distribution services, or both.

"Bill-ready" means the consolidated billing practice in which the non-billing party calculates each retail customer's billing charges for services provided and forwards such charges to the billing party for inclusion on the consolidated bill. "Business day" means any calendar day or computer processing day in the Eastern United States time zone in which the general office of the applicable local distribution company is open for business with the public.

"Competitive energy service" means the retail sale of electricity supply service, natural gas supply service, or any other competitive service as provided by legislation and approved by the State Corporation Commission as part of retail access by an entity other than the local distribution company as a regulated utility. For the purpose of this chapter, competitive energy services include services provided to retail customers by aggregators.

"Competitive service provider" means a person, licensed by the State Corporation Commission, that sells or offers to sell a competitive energy service within the Commonwealth. This term includes affiliated competitive service providers, as defined above, but does not include a party that supplies electricity or natural gas, or both, exclusively for its own consumption or the consumption of one or more of its affiliates. For the purpose of this chapter, competitive service providers include aggregators.

"Competitive transition charge" means the wires charge, as provided by § 56-583 of the Code of Virginia, that is applicable to a retail customer that chooses to procure electricity supply service from a competitive service provider.

"Consolidated billing" means the rendering of a single bill to a retail customer that includes the billing charges of a competitive service provider and the billing charges of the local distribution company.

"Customer" means retail customer.

"Distribution service" means the delivery of electricity or natural gas, or both, through the distribution facilities of the local distribution company to a retail customer.

"Electricity supply service" means the generation of electricity, or when provided together, the generation of electricity and its transmission to the distribution facilities of the local distribution company on behalf of a retail customer.

"Electronic Data Interchange" (EDI) means computer-to-computer exchange of business information using common standards for high volume electronic transactions.

"Local distribution company" means an entity regulated by the State Corporation Commission that owns or controls the distribution facilities required for the transportation and delivery of electricity or natural gas to the retail customer.

"Natural gas supply service" means the procurement of natural gas, or when provided together, the procurement of natural gas and its transportation to the distribution facilities of a local distribution company on behalf of a retail customer.

"Non-billing party" means a person that provides retail customer billing information for competitive energy services to the local distribution company for the purpose of consolidated billing.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any city, county, town, authority or other political subdivision of the Commonwealth.

"Price-to-compare" means the portion of the electric local distribution company's regulated rate applicable to electricity supply service less the competitive transition charge rate or the portion of the natural gas local distribution company's regulated rate applicable to natural gas supply service.

"Rate-ready" means the consolidated billing practice in which the non-billing party provides rate information to the billing party to calculate and include the non-billing party's charges on the consolidated bill.

"Residential customer" means any person receiving retail distribution service under a residential tariff of the local distribution company.

"Retail access" means the opportunity for a retail customer in the Commonwealth to purchase a competitive energy service from a licensed competitive service provider seeking to sell such services to that customer.

"Retail customer" means any person that purchases retail electricity or natural gas for his or her own consumption at one or more metering points or non-metered points of delivery located within the Commonwealth.

"Separate billing" means the rendering of separate bills to a retail customer for the billing charges of a competitive service provider and the billing charges of the local distribution company.

"Transmission provider" means an entity regulated by the Federal Energy Regulatory Commission that owns or operates, or both, the transmission facilities required for the delivery of electricity or natural gas to the local distribution company or retail customer.

"Virginia Electronic Data Transfer Working Group" (VAEDT) means the group of representatives from electric and natural gas local distribution companies, competitive service providers, the staff of the State Corporation Commission, and the Office of Attorney General whose objective is to formulate guidelines and practices for the electronic exchange of information necessitated by retail access.

**20 VAC 5-312-20. General provisions.**

A. A request for a waiver of any of the provisions in this chapter shall be considered by the State Corporation Commission on a case-by-case basis, and may be granted upon such terms and conditions as the State Corporation Commission may impose.

B. The provisions of this chapter may be enforced by the State Corporation Commission by any means authorized under applicable law or regulation. Enforcement actions may include, without limitation, the refusal to issue any license for which application has been made, and the revocation or suspension of any license previously granted. The provisions of this chapter shall not be deemed to preclude a person aggrieved by a violation of these regulations from pursuing any civil relief that may be available under state or federal law, including, without limitation, private actions for damages or other equitable relief.

C. The provisions of this chapter shall not be deemed to prohibit the local distribution company, in emergency situations, from taking actions it is otherwise authorized to take that are necessary to ensure public safety and reliability of the distribution system. The State Corporation Commission, upon a claim of inappropriate action or its own motion, may investigate and take such corrective actions as may be appropriate.

D. The State Corporation Commission maintains the right to inspect the books, papers, records and documents, and to require reports and statements, of a competitive service provider as required to verify qualifications to conduct business within the Commonwealth, to support affiliate transactions, to investigate allegations of violations of this chapter, or to resolve a complaint filed against a competitive service provider.

E. The local distribution company, or the default service provider as determined by the State Corporation Commission pursuant to §56-585 of the Code of Virginia, shall provide, pursuant to the prices, terms, and conditions of its tariffs approved by the State Corporation Commission, service to all customers that do not select a competitive service provider and to customers that chose a competitive service provider but whose service is terminated at the request of the customer or by the competitive service provider for any reason.

F. A competitive service provider selling electricity supply service or natural gas supply service, or both, at retail shall:

1. Procure sufficient electric generation and transmission service or sufficient natural gas supply and delivery capability, or both, to serve the requirements of its firm customers.

2. Abide by any applicable regulation or procedure of any institution charged with ensuring the reliability of the electric or natural gas systems, including the State Corporation Commission, the North American Electric Reliability Council, and the Federal Energy Regulatory Commission, or any successor agencies thereto.

3. Comply with any obligations that the State Corporation Commission may impose to ensure access to sufficient availability of capacity.

G. The local distribution company and a competitive service provider shall not:

1. Suggest that the services provided by the local distribution company are of any different quality when competitive energy services are purchased from a particular competitive service provider; or

2. Suggest that the competitive energy services provided by a competitive service provider are being provided by the local distribution company rather than the competitive service provider.

H. The local distribution company and a competitive service provider shall bear the responsibility for metering as provided by legislation and implemented by the State Corporation Commission.

I. The local distribution company and a competitive service provider shall coordinate their customer communication activities with the State Corporation Commission's statewide consumer education campaign.

J. The local distribution company and a competitive service provider shall adhere to standard practices for exchanging data and information in an electronic medium as specified by the VAEDT and filed with the State Corporation Commission. In the event the parties agree to initially use a means other than those specified by VAEDT, then the competitive service provider shall file a plan with the State Corporation Commission's Division of Economics and Finance to implement VAEDT approved standards within 180 days of the initial retail offering. K. The local distribution company and a competitive service provider that is responsible for exchanging customer information electronically with the local distribution company shall successfully complete EDI testing and receive certification for all applicable EDI transactions, as outlined in the VAEDT EDI Test Plan, prior to actively enrolling customers, except as permitted by subsection J of this section.

L. A competitive service provider offering billing service that requires the direct delivery of a bill to a customer and that requires the electronic exchange of data with the local



**distribution company** shall furnish, prior to enrolling the customer, a sample bill produced from the data exchanged in the EDI certification process as described in subsection K of this section, or a sample bill produced similarly elsewhere, to the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance.

M. The local distribution company shall file with the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance a monthly report **which shall, at a minimum, include** all cancellation requests alleging a customer was enrolled without authorization. Such reports shall include: (i) the approximate date of the enrollment; (ii) the identity of the competitive service provider involved; (iii) the name and address of the customer that cancelled such enrollment; and (iv) a brief statement regarding the customer's explanation for the cancellation. Such reports shall be reviewed by commission staff and regarded as confidential unless and until the State Corporation Commission orders otherwise.

N. The local distribution company shall file with the State Corporation Commission's Division of Economics and Finance a quarterly report providing a detailed breakdown of residential and non-residential customer switching activity. Such reports shall include, for the local distribution company, the total number of customers and corresponding amount of load eligible to switch; and, for each competitive service provider, the total number of customers and corresponding amount of load served. **The amount of load shall be measured in MW or dekatherm capacity of peak load contribution and in kWh or therms of associated energy.** Such reports shall be reviewed by commission staff and information specific to individual competitive service providers shall be regarded as confidential unless and until the State Corporation Commission orders otherwise.

O. By March 31 of each year, the provider of electricity supply service shall report to its customers and file a report with the State Corporation Commission stating to the extent feasible, fuel mix and emissions data for the prior calendar year. If such data is unavailable, the provider of electricity supply service shall file a report with the State Corporation Commission stating why it is not feasible to submit any portion of such data.

P. A competitive service provider shall file a report with the State Corporation Commission by March 31 of each year to update all information required in the original application for licensure. A \$100 administrative fee payable to the State Corporation Commission shall accompany this report.

Q. A competitive service provider shall inform the State Corporation Commission within 30 days of the following: (i) any change in its name, address and telephone numbers; (ii) any change in information regarding its affiliate status with the local distribution company; (iii) any changes to information provided pursuant to 20 VAC 5-312-40 A 13; and (iv) any changes to information provided pursuant to 20 VAC 5-312-40 A 15.

R. If a filing with the State Corporation Commission, made pursuant to this chapter, contains information that the local distribution company or a competitive service provider claims to be confidential, the filing may be made under seal provided it is accompanied by both a motion for protective order or other confidential treatment and an additional five copies of a redacted version of the filing to be available for public disclosure. Unredacted filings containing the confidential information shall be maintained under seal unless the State Corporation Commission orders otherwise, except that such filings shall be immediately available to the commission staff for internal use at the commission. Filings containing confidential or redacted

information shall be so stated on the cover of the filing, and the precise portions of the filing containing such confidential or redacted information, including supporting material, shall be clearly marked within the filing.

**20 VAC 5-312-30. Codes of conduct.**

A. An affiliated competitive service provider may use the name or logo of its affiliated local distribution company in advertising and solicitation materials. A disclaimer shall be used when an affiliated competitive service provider offers services in the certificated service territory of its affiliated local distribution company. Such disclaimer shall clearly and conspicuously disclose that the affiliated competitive service provider is not the same company as the local distribution company. Disclaimers shall not be required, however, on company vehicles, clothing, or trinkets, writing instruments, or similar promotional materials. Upon complaint of any interested person, the Attorney General, staff motion, or on its own motion, the State Corporation Commission may, after notice and an opportunity for hearing, make a determination whether any such usage is misleading, and if so, take appropriate corrective actions.

B. An affiliated competitive service provider shall operate independently of its affiliated local distribution company and shall abide by the following provisions with respect to any competitive energy service it offers in the certificated service territory of the affiliated local distribution company:

1. Each affiliated competitive service provider shall implement internal controls to ensure that it and its employees, contractors and agents that are engaged in the

(i) merchant, operations, transmission, or reliability functions of the electric generation or natural gas supply systems, or (ii) customer service, sales, marketing, **metering**, accounting or billing functions, do not receive information from an affiliated local distribution company or from entities that provide similar functions for or on behalf of its affiliated local distribution company or affiliated transmission provider as would give such affiliated competitive service provider an undue advantage over non-affiliated competitive service providers. For purposes of this subdivision, "undue advantage" means an advantage that is reasonably likely to adversely affect the development of effective competition within the Commonwealth.

2. An affiliated competitive service provider shall file with the State Corporation Commission a revised listing and description of all internal controls required in subdivision 1 **of this subsection** within 10 days of any modification to such controls as was originally provided under 20 VAC 5-312-40 A 8 as part of the requirements of the affiliated competitive service provider's application for license.

3. An affiliated competitive service provider shall document each occasion that an employee of its affiliated local distribution company, or of the transmission provider that serves its affiliated local distribution company, becomes one of its employees and each occasion that one of its employees becomes an employee of its affiliated local distribution company or the transmission provider that serves its affiliated local distribution company. Upon staff's request, such information shall be filed with the State Corporation Commission that identifies each such occasion. Such information shall

include a listing of each employee transferred and a brief description of each associated position and responsibility.

C. Each affiliated competitive service provider shall maintain separate books of accounts and records.

D. The local distribution company shall not give undue preference to an affiliated competitive service provider over the interests of any other competitive service provider related to the provision of electric transmission, distribution, generation, or ancillary services, or natural gas supply or capacity. For purposes of this subsection, "undue preference" means a preference that is reasonably likely to adversely affect the development of effective competition within the Commonwealth.

E. The local distribution company shall provide information related to the transmission, distribution or provision of electricity, ancillary services, or natural gas supply or capacity to an affiliated competitive service provider only if it makes such information available simultaneously, through an electronic bulletin board or similar means of public dissemination, to all other competitive service providers licensed to conduct business in Virginia. This provision shall not apply to daily operational data, information provided in response to inquiries regarding the applicability of tariffs and terms and conditions of service, or similar data provided by the local distribution company to any competitive service provider in the ordinary course of conducting business. Nothing in this provision shall require the local distribution company to disseminate to all competitive service providers information requested and deemed competitively sensitive by a competitive service provider and supplied by the local distribution company.

F. Joint advertising and marketing shall be prohibited between the local distribution company and its affiliated competitive service provider unless made available to all competitive service providers upon the same price, terms, and conditions.

G. The local distribution company shall not condition the provision of any services on the purchase of any other service or product from its affiliated competitive service provider.

H. The local distribution company shall operate independently of any affiliated competitive service provider and shall observe the following requirements with respect to any competitive energy service offered by such affiliated competitive service provider in the local distribution company's certificated service territory:

1. Each local distribution company having an affiliated competitive service provider shall develop and implement internal controls to ensure that it and its employees, contractors, and agents that are engaged in the (i) merchant, operations, transmission, or reliability functions of the electric generation or natural gas supply systems, or (ii) customer service, sales, marketing, metering, accounting or billing functions, do not provide information to an affiliated competitive service provider or to entities that provide similar functions for or on behalf of such an affiliated competitive service provider as would give such affiliated competitive service provider an undue advantage, as defined in subdivision B 1 of this section, over non-affiliated competitive service providers.

2. An affiliated local distribution company shall file with the State Corporation Commission a listing and description of all internal controls required in

subdivision 1 [of this subsection](#) not later than 30 days prior to implementation or within 10 days of any modification to such controls.

3. The local distribution company shall document each occasion that an employee of its affiliated competitive service provider becomes one of its employees and each occasion that one of its employees becomes an employee of its affiliated competitive service provider. Upon staff's request, such information shall be filed with the State Corporation Commission that identifies each such occasion. Such information shall include a listing of each employee transferred and a brief description of each associated position and responsibility.

I. With respect to affiliate transactions, the local distribution company shall abide by the following:

1. The local distribution company shall be compensated at the greater of fully distributed cost or market price for all non-tariffed services, facilities, and products provided to an affiliated competitive service provider. An affiliated competitive service provider shall be compensated at the lower of fully distributed cost or market price for all non-tariffed services, facilities, and products provided to the local distribution company. If market price data are unavailable, non-tariffed services, facilities and products shall be compensated at fully distributed cost and the local distribution company shall document its efforts to determine market price data and its basis for concluding that such price data are unavailable. Notification of a determination of the unavailability of market price data shall be included with the report required in subdivision 2 [of this subsection](#).

2. The local distribution company shall file annually, with the State Corporation Commission, a report that shall, at a minimum, include: the amount and description of each type of non-tariffed service provided to or by an affiliated competitive service provider; accounts debited or credited; and the compensation basis used, i.e., market price or fully distributed cost. The local distribution company shall maintain the following documentation for each agreement and arrangement where such services are provided to or by an affiliated competitive service provider and make such documentation available to staff upon request: (i) component costs (i.e., direct or indirect labor, fringe benefits, travel or housing, materials, supplies, indirect miscellaneous expenses, equipment or facilities charges, and overhead); (ii) profit component; and (iii) comparable market values, with supporting documentation.

**20 VAC 5-312-40. Licensing.**

A. Each person applying for a license to conduct business as a competitive service provider, including entities described in § 56-589 A 1 of the Code of Virginia, shall file an original and 15 copies of its application with the Clerk of the State Corporation Commission. If there are any material changes to the applicant's information while the application is pending, the applicant shall inform the State Corporation Commission within 10 calendar days. Each application shall include the following:

1. Legal name of the applicant as well as any trade name.
2. A description of the applicant's authorized business structure, identifying the state authorizing such structure and the date thereof; e.g., if incorporated, the state and



date of incorporation; if a limited liability company, the state issuing the certificate of organization and the date thereof.

3. Name and business addresses of all principal corporate officers and directors, partners, and LLC members, as appropriate.

4. Physical business addresses and telephone numbers of the applicant's principal office and any Virginia office location or locations.

5. A list of states in which the applicant or an affiliate conducts business related to electricity supply service or natural gas supply service, the names under which such business is conducted, and a description of the businesses conducted.

6. Names of the applicant's affiliates and subsidiaries. If available, applicant shall satisfy this requirement by providing a copy of its most recent form 10K, Exhibit 21 filing with the Securities and Exchange Commission.

7. Disclosure of any affiliate relationships with local distribution companies or competitive service providers, or both, that conduct business in Virginia, and any agreements with the affiliated local distribution company that affect the provision of competitive energy services within the Commonwealth of Virginia.

8. If an affiliated competitive service provider, a description of internal controls the applicant has designed to ensure that it and its employees, contractors, and agents that are engaged in the (i) merchant, operations, transmission, or reliability functions of the electric generation or natural gas supply systems, or (ii) customer service, sales, marketing, metering, accounting or billing functions, do not receive information from an affiliated local distribution company or from entities that provide

similar functions for or on behalf of its affiliated local distribution company or affiliated transmission provider as would give such affiliated competitive service provider an undue advantage over non-affiliated competitive service providers. For purposes of this subdivision, "undue advantage" means an advantage that is reasonably likely to adversely affect the development of effective competition in the Commonwealth.

9. Toll-free telephone number of the customer service department.

10. Name, title, address, telephone number, facsimile number, and e-mail address of the company liaison with the State Corporation Commission.

11. Name, title, and address of the applicant's registered agent in Virginia for service of process.

12. If a foreign corporation, a copy of the applicant's authorization to conduct business in Virginia from the State Corporation Commission or if a domestic corporation, a copy of the certificate of incorporation from the State Corporation Commission.

13. Sufficient information to demonstrate, for purposes of licensure with the State Corporation Commission, financial fitness commensurate with the service or services proposed to be provided. Applicant shall submit the following information related to general financial fitness:

a. If available, applicant's audited balance sheet and income statement for the most recent fiscal year and published financial information such as the most recent Securities and Exchange Commission forms 10K and 10Q. If not available, other financial information for the applicant or any other entity that provides financial resources to the applicant.

b. If available, proof of a minimum bond rating (or other senior debt) of "BBB-" or an equivalent rating by a major rating agency, or a guarantee with a guarantor possessing a credit rating of "BBB-" or higher from a major rating agency. If not available, other evidence that will demonstrate the applicant's financial responsibility.

14. The name of the local distribution company that is certificated to provide service in the area in which the applicant proposes to provide service, the type of service or services it proposes to provide, and the class of customers to which it proposes to provide such services.

15. a. Disclosure of any (i) civil, criminal, or regulatory sanctions or penalties imposed or in place within the previous five years against the company, any of its affiliates, or any officer, director, partner, or member of an LLC or any of its affiliates, pursuant to any state or federal consumer protection law or regulation; and (ii) felony convictions within the previous five years, which relate to the business of the company or to an affiliate thereof, of any officer, director, partner, or member of an LLC.

b. Disclosure of whether any application for license or authority to conduct the same type of business as it proposes to offer in Virginia has ever been denied, and whether any license or authority issued to it or an affiliate has ever been suspended or revoked and whether other sanctions have been imposed.

c. If applicant has engaged in the provision of electricity supply service or natural gas supply service, or both, in Virginia or any other state, a

report of all instances of violations of reliability standards that were determined to be the fault of the applicant, including unplanned outages, failure to meet service obligations, and any other deviations from reliability standards during the previous three years. The report shall include, for each instance, the following information: (i) a description of the event; (ii) its duration; (iii) its cause; (iv) the number of customers affected; (v) any reports, findings or issuances by regulators or electric and natural gas system reliability organizations relating to the instance; (vi) any penalties imposed; and (vii) whether and how the problem has been remedied.

16. A \$250 registration fee payable to the State Corporation Commission.

17. Sufficient information to demonstrate technical fitness commensurate with the service or services to be provided, to include:

- a. The applicant's experience.
- b. Identity of applicant's officers directly responsible for the business operations conducted in Virginia and their experience in the generation of electricity, procurement of electricity or natural gas, or both, and the provision of energy services to retail customers.
- c. If applying to sell electricity supply service at retail, documentation of any membership or participation in regional reliability councils or regional transmission organizations.
- d. If applying to sell electricity supply service or natural gas supply service, or both, at retail, information concerning access to generation, supply,

reserves, and transmission. If applying to sell electricity supply service, provide information specifying, to the extent possible, the expected sources of electricity or electricity procurement practices and transmission arrangements that will be used to support retail sales of electricity in Virginia. If applying to sell natural gas supply service, provide information regarding pipeline capacity and storage arrangements, including assurances that such suppliers will be able to meet the requirements of their essential human needs customers.

e. Billing service options the applicant intends to offer and a description of the applicant's billing capability including a description of any related experience.

18. A copy of the applicant's dispute resolution procedure.

B. An officer with appropriate authority, under penalty of perjury shall attest that all information supplied on the application for licensure form is true and correct, and that, if licensed, the applicant will abide by all applicable regulations of the State Corporation Commission.

C. Upon receipt of an application for a license to conduct business as a competitive service provider, the State Corporation Commission shall enter an order providing notice to appropriate persons and an opportunity for written comments on the application.

D. If any application fails to conform to the requirements herein, the application shall not be regarded as complete. No action shall be taken on any application until deemed complete and filed.

E. A license to conduct business as a competitive service provider granted under this section is valid until revoked or suspended by the State Corporation Commission after providing due notice and an opportunity for a hearing, or until the competitive service provider abandons its license in accordance with 20 VAC 5-312-80 O.

F. A competitive service provider shall comply with all initial and continuing requirements of the State Corporation Commission's licensure process and any reasonable registration processes required by the local distribution company and the transmission provider. Should the State Corporation Commission determine, upon complaint of any interested person, the Attorney General, upon staff motion, or its own motion, that a competitive service provider has failed to comply with any of the requirements of this chapter or a State Corporation Commission order related thereto, the State Corporation Commission may, after providing due notice and an opportunity for a hearing, suspend or revoke the competitive service provider's license or take any other actions permitted by law or regulations as it may deem necessary to protect the public interest.

**20 VAC 5-312-50. Competitive service provider registration with the local distribution company.**

A. A competitive service provider shall submit to the local distribution company the full name of the competitive service provider, the type of entity (e.g., partnership, corporation, etc.), physical street and mailing addresses.

B. A competitive service provider shall furnish the local distribution company and the transmission provider proof of licensure from the State Corporation Commission to provide

competitive energy services in the Commonwealth. A competitive service provider shall provide notice of any suspension or revocation of its license to the local distribution company and the transmission provider upon issuance of the suspension or revocation by the State Corporation Commission.

C. A competitive service provider and the local distribution company shall exchange the names, telephone numbers, and e-mail addresses of appropriate internal points of contact to address operational, business coordination and customer account issues, and the names and addresses of their registered agents in Virginia.

D. The local distribution company may require reasonable financial security from the competitive service provider to safeguard the local distribution company and its customers from the reasonably expected net financial impact due to the non-performance of the competitive service provider. The amount of such financial security shall be commensurate with the level of risk assumed by the local distribution company, as determined by the local distribution company's applicable tariff approved by the State Corporation Commission. Such financial security may include a letter of credit, a deposit in an escrow account, a prepayment arrangement, a surety bond, or other arrangements that may be mutually agreed upon by the local distribution company and the competitive service provider. Disagreements with respect to financial security shall be subject to the dispute resolution procedures established pursuant to 20 VAC 5-312-110 G.

E. Prior to imposing a non-emergency related restriction or disqualification on a competitive service provider, in accordance with its applicable tariff as approved by the State Corporation Commission, the local distribution company shall notify the competitive service

provider of the alleged action or inaction that merits such restriction or disqualification and the actions, if any, that the competitive service provider may take to avoid the restriction or disqualification. Such notice shall be in writing and sent to the competitive service provider via fax or overnight delivery at least 10 business days prior to the effective date. A copy of the notice shall be forwarded contemporaneously to the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance.

**20 VAC 5-312-60. Customer information.**

A. A competitive service provider shall adequately safeguard all customer information and shall not release such information unless the customer authorizes disclosure or unless the information to be disclosed is already in the public domain. This provision, however, shall not restrict the disclosure of credit and payment information as currently permitted by federal and state statutes.

B. The local distribution company shall provide, upon the request of a competitive service provider, a mass list of eligible customers. A competitive service provider shall adequately safeguard all of the information included on the mass list and shall not release such information unless the customer authorizes disclosure or unless the information to be disclosed is already in the public domain.

1. The mass list shall include the following customer information: (i) customer name; (ii) service address; (iii) billing address; (iv) either an account number, a service delivery point, or universal identifier, as applicable; (v) electricity or natural gas service identifier; (vi) meter reading date or cycle; (vii) wholesale delivery point, if



applicable; (viii) rate class and subclass or rider, as applicable; (ix) load profile reference category, if not based on rate class; and (x) up to twelve months of cumulative historic energy usage and annual peak demand information as available.

2. Prior to releasing any information on the mass list, the local distribution company shall provide each customer the opportunity to have the information itemized in subdivision 1 of this subsection withheld, in total, from the mass list.

3. The local distribution company shall make the mass list available two months prior to implementation of full or phased-in retail access and shall update or replace the list every six months thereafter. Prior to each update, each customer shall be provided an opportunity to reverse the prior decision regarding the release of the information included on the mass list.

4. The local distribution company shall prepare and make available the mass list by means specified by the VAEDT.

C. A competitive service provider choosing to utilize the mass list shall use the most recent mass list made available by the local distribution company.

D. A competitive service provider shall obtain customer authorization prior to requesting any customer information not included on the mass list from the local distribution company. A competitive service provider shall provide evidence of such authorization, in the manner required to demonstrate authorization to enroll a customer in 20 VAC 5-312-80 B, upon request by the customer or the State Corporation Commission.

**20 VAC 5-312-70. Marketing.**

A. A competitive service provider shall provide, in any advertisements, solicitations, marketing materials, or customer service contracts, accurate, understandable information, in a manner that is not misleading. Any such materials specifying a price for electricity supply service or natural gas supply service shall include a statement that the local distribution company shall continue to provide and charge for distribution service.

B. A competitive service provider shall provide to a prospective residential customer, in writing or by electronic means, prior to, or contemporaneously with, the written contract, an estimated electricity supply service or natural gas supply service annual bill assuming average monthly usage of 1,000 kWh of electricity or 7.5 Mcf or 75 therms of natural gas, including all fees and minimum or fixed charges, exclusive of any non-recurring financial or non-financial incentives, and the total average price per kWh, Mcf, or therm based on the annual bill. If a competitive service provider's offer cannot be adequately described in such a manner or if the prospective customer is other than a residential customer, the competitive service provider shall furnish similar information that will allow prospective customers to reasonably compare the price of electricity supply service or natural gas supply service, if purchased from a competitive service provider, to the price of equivalent service provided by the local distribution company.

C. Customer service contracts shall include:

1. Price or, if the exact price cannot feasibly be specified, an explanation of how the price will be calculated;
2. Length of the service contract, including any provisions for automatic contract renewal;

3. Provisions for termination by the customer and by the competitive service provider;
4. A statement of any minimum contract terms, minimum or maximum usage requirements, minimum or fixed charges, **any other potential charges**, and any required deposit;
5. Applicable fees including, but not limited to, start-up fees, cancellation fees, late payment fees, and fees for checks returned for insufficient funds;
6. A notice of billing terms and conditions;
7. A toll-free telephone number and an address for inquiries and complaints;
8. A clear and conspicuous caption: "**CUSTOMER'S RIGHT TO CANCEL**," that shall appear on the front side of the contract, or immediately above the customer's signature, in bold face type of a minimum size of ten points, and a statement under such caption that a customer may cancel the contract, without penalty, with the competitive service provider by notifying the local distribution company prior to midnight of the tenth day following the mailing of notice by the local distribution company of an enrollment request **except for those customers that have specifically agreed with the competitive service provider to a shorter period as provided by subsection D of this section**;
9. In a conspicuous place, confirmation of the customer's request for enrollment and the approximate date the customer's service shall commence;
10. **A notice that, upon request by the customer, the competitive service provider shall provide a copy of its dispute resolution procedure; and**

11. A notice that, upon any change in the terms and conditions of the contract, including any provisions governing price or pricing methodology, the competitive service provider shall communicate such changes to the customer at least 30 days in advance of implementing such changes.

D. A competitive service provider and a non-residential customer that is subject to demand-based billing charges may contractually agree to a shorter cancellation period than stated in subdivision C 8 of this section. The competitive service provider shall inform the customer that although the customer has waived the right to rescind, the customer may still receive notification from the local distribution company indicating a time period to do so.

E. A competitive service provider that claims its offerings possess unusual or special attributes shall maintain documentation to substantiate any such claims. Such documentation may be made available through electronic means and a written explanation shall be provided promptly upon request of any customer, prospective customer, competitive service provider, local distribution company, or the State Corporation Commission.

F. Prior to the enrollment of a customer with a competitive service provider, an aggregator shall provide written notice to the customer identifying the name, toll-free telephone number, and address of the selected competitive service provider.

G. An aggregator that receives or expects to receive compensation from both a customer, or a prospective customer, and the customer's competitive service provider shall disclose in writing to the customer the existence or expectation of such an arrangement.

**20 VAC 5-312-80. Enrollment and switching.**

A. A competitive service provider shall be permitted to enroll a customer upon: (i) receiving a license by the State Corporation Commission; (ii) receiving EDI certification as required by the VAEDT, including the subsequent provision of a sample bill as required by 20 VAC 5-312-20 L; and (iii) completing registration with the local distribution company.

B. A competitive service provider shall enroll, or modify the services provided to, a customer only after the customer has affirmatively authorized such enrollment or modification. A competitive service provider shall maintain adequate records allowing it to verify a customer's enrollment authorization. Examples of adequate records of enrollment authorization include: (i) a written contract signed by the customer; (ii) a written statement by an independent third party that witnessed or heard the customer's verbal commitments; (iii) a recording of the customer's verbal commitment; or (iv) electronic data exchange, including the Internet, provided that the competitive service provider can show that the electronic transmittal of a customer's authorization originated with the customer. Such authorization records shall contain the customer's name and address; the date the authorization was obtained; the name of the product, pricing plan, or service that is being subscribed; and acknowledgment of any switching fees, minimum contract terms or usage requirements, or cancellation fees. Such authorization records shall be retained for at least 12 months after enrollment and shall be provided within five business days upon request by the customer or the State Corporation Commission.

C. A competitive service provider shall send a written contract to a customer prior to, or contemporaneously with, sending the enrollment request to the local distribution company.

D. Upon a customer's request, a competitive service provider may re-enroll such customer at a new address under the existing contract, without acquiring new authorization

records, if a competitive service provider is licensed and registered with the local distribution company to provide service to the customer's new address.

E. The local distribution company shall advise a customer initiating new service of the customer's right and opportunity to choose a competitive service provider.

F. In the event that multiple enrollment requests are submitted regarding the same customer within the same enrollment period, the local distribution company shall process the first request submitted and reject all others for the same enrollment period.

G. The competitive service provider shall submit enrollment requests to the local distribution company at least 15 days prior to the customer's next scheduled meter read date for service to be effective on that meter read date. For enrollment requests received less than 15 days prior to the customer's next scheduled meter read date, service shall be effective on the customer's subsequent meter read date.

H. Upon receipt of an enrollment request from a competitive service provider, the local distribution company shall, normally within one business day of receipt of such notice, mail notification to the customer advising of the enrollment request, the approximate date that the competitive service provider's service commences, and the caption and statement as to cancellation required by 20 VAC 5-312-70 C 8. The customer shall have until midnight of the tenth day following the mailing of such notification to advise the local distribution company to cancel such enrollment without penalty.

I. In the event a competitive service provider receives a cancellation request, it shall notify, by any means specified by the VAEDT, the local distribution company of the customer's cancellation in order to terminate the enrollment process.

J. In the event the local distribution company receives notice of a cancellation request from a competitive service provider or a customer, the local distribution company shall terminate the enrollment process by any means specified by the VAEDT.

K. A competitive service provider shall commence service to a customer as provided in the local distribution company's applicable tariff as approved by the State Corporation Commission. A competitive service provider may request, pursuant to the local distribution company's tariff, a special meter reading, in which case the enrollment may become effective on the date of the special meter reading. The local distribution company shall perform the requested special meter reading as promptly as working conditions permit.

L. In the event a customer terminates a contract beyond the [contract](#) cancellation period, the competitive service provider [or the local distribution company](#) shall provide notice of termination to the [other party](#) by any means specified by the VAEDT.

M. If a competitive service provider terminates an individual contract for any reason, including expiration of the contract, the competitive service provider shall provide notice of termination to the local distribution company by any means specified by the VAEDT and also shall send written notification of such termination to the customer at least 30 days prior to the date that service to the customer is scheduled to terminate.

N. If the local distribution company is notified by a competitive service provider that the competitive service provider will terminate service to a customer, the local distribution company shall respond to a competitive service provider by any means specified by the VAEDT that will acknowledge (i) receipt of a competitive service provider's notice, and (ii) the date that a competitive service provider's service to the customer is scheduled to terminate. Additionally,

the local distribution company shall send written notification to the customer, normally within five business days, that it was so informed and describe the customer's opportunity to select a new supplier. The local distribution company shall inform the affected customer that if the customer does not select another competitive service provider, the local distribution company, [or the default service provider as determined by the State Corporation Commission pursuant to §56-585 of the Code of Virginia](#), shall provide the customer's electricity supply service or natural gas supply service under rates [approved by the State Corporation Commission](#).

O. If a competitive service provider decides to terminate service to a customer class or to abandon service within the Commonwealth, the competitive service provider shall provide at least 60 days advanced written notice to the local distribution company, to the affected customers, and to the State Corporation Commission.

P. If the local distribution company issues a final bill to a customer, the local distribution company shall notify, by any means specified by the VAEDT, the customer's competitive service provider.

#### **20 VAC 5-312-90. Billing and payment.**

A. A competitive service provider shall offer separate billing service or consolidated billing service by the local distribution company, or both, to prospective customers pursuant to § 56-581.1 of the Code of Virginia.

B. A competitive service provider shall coordinate the provision of the customer-selected billing service with the local distribution company by any means specified by VAEDT.



C. Consolidated billing by the local distribution company, except as otherwise arranged through contractual agreement between the local distribution company and a competitive service provider, shall:

1. Be performed under a "bill-ready" protocol. The local distribution company shall make reasonable efforts to accommodate the "rate-ready" protocol through negotiation with a competitive service provider, where practical.

2. Not require the local distribution company to purchase the accounts receivable of the competitive service provider.

3. Not require the electric local distribution company to include natural gas competitive energy service charges on a consolidated bill or the natural gas local distribution company to include electric competitive energy service charges on a consolidated bill.

4. Not require the local distribution company to receive the transmittal of billing information for one customer account from more than one competitive service provider for the same billing period.

D. In the event a competitive service provider collects security deposits or prepayments, such funds shall be held in escrow by a third party in Virginia, and the competitive service provider shall provide to the State Corporation Commission the name and address of the entity holding such deposits or prepayments.

E. A competitive service provider requiring a deposit or prepayment from a customer shall limit the amount of the deposit or prepayment to the equivalent of a customer's

estimated liability for no more than three months' usage of services from the competitive service provider by that customer.

F. Customer deposits held or collected by a local distribution company shall be for only those services provided by the local distribution company. Any deposit held in excess of this amount shall be promptly credited or refunded to the customer. The local distribution company may, upon a customer's return to regulated electricity supply service or natural gas supply service, collect that portion of a customer deposit as permitted by the local distribution company's tariffs and 20 VAC 5-10-20.

G. Terms and conditions concerning customer disconnection for non-payment of regulated service charges shall be set forth in each local distribution company's tariff approved by the State Corporation Commission. A customer may not be disconnected for non-payment of unregulated service charges.

H. The local distribution company shall, **absent a customer's designation resulting from disputed billing charges**, apply a customer's partial payment of a consolidated bill to charges in the following order: (i) to regulated service arrearages owed the local distribution company; (ii) to competitive energy service arrearages owed the competitive service provider; (iii) to regulated service current charges of the local distribution company; (iv) to competitive energy service current charges of the competitive service provider; and (v) to other charges. Collections of state and local consumption taxes and local utility taxes shall be remitted as required by law.

I. The local distribution company **and** a competitive service provider shall comply with the following minimum billing information standards applicable to all customer bills:

1. Sufficient information shall be provided or referenced on the bill so that a customer can understand and calculate the billing charges.
2. Charges for regulated services and unregulated services shall be clearly distinguished.
3. Standard terminology shall be employed and charges shall be categorized for the following key bill components, as applicable: (i) distribution service; (ii) competitive transition charge; (iii) electricity supply service or natural gas supply service; (iv) state and local consumption tax; and (v) local (or locality name) utility tax. The bill may provide further detail of each of these key components as appropriate.
4. Non-routine charges and fees shall be itemized including late payment charges and deposit collections.
5. The total bill amount due and date by which payment must be received to avoid late payment charges shall be clearly identified.
6. The 24-hour toll-free telephone number of the local distribution company for service emergencies shall be clearly identified.
7. In the event a disconnection notice for non-payment is included on a customer bill, the notice shall appear on the first page of the bill and be emphasized in a manner that draws immediate attention to such notice. The notice shall clearly identify the amount that must be paid and the date by which such amount must be paid to avoid disconnection.
8. The following additional information shall be provided on customer bills to the extent applicable:

a. Customer name, service address, billing address, account number, rate schedule identifier, and meter identification number.

b. Billing party name, payment address, and toll-free telephone number for customer inquiries and complaints.

c. For consolidated bills, non-billing party name and toll-free telephone number for customer inquiries and complaints.

d. Bill issue date and notice of change in rates.

e. Previous and current meter readings and dates of such meter readings or metering period days, current period energy consumption, meter reading unit conversion factor, billing-demand information, and "estimated" indicator for non-actual meter reads.

f. Previous bill amount, payments received since previous billing, balance forward, current charges, total amount due, and budget billing information.

g. For consolidated bills, billing party, and non-billing party elements as specified in subdivision 8 f of [this subsection](#).

J. The local distribution company shall comply with the following additional billing information standards applicable to the bills of customers that are not subject to demand-based billing charges and that purchase regulated electricity supply service or regulated natural gas supply service from the local distribution company:

1. The local distribution company shall employ standard terminology and categorize charges for the following key billing components: (i) distribution service; (ii)

electricity supply service or natural gas supply service; (iii) state and local consumption tax; and (iv) local (or locality name) utility tax. Brief explanations of distribution service and electricity supply service or natural gas supply service shall be presented on the bill. Such explanations shall convey that distribution service is a regulated service that must be purchased from the local distribution company and that electricity supply service or natural gas supply service may be purchased from the competitive market but, if applicable, may result in a competitive transition charge. An estimate shall be provided of the competitive transition charge for the current month that would have been charged if the customer had purchased electricity supply service from a competitive service provider;

2. The local distribution company shall provide on customer bills a customer's monthly energy consumption, numerically or graphically, for the previous 12 months; and

3. The investor-owned electric local distribution company shall provide on each bill a "price-to-compare" value, stated in cents per kilowatt-hour, representing the cost of regulated electricity supply service less the competitive transition charge, if any, that would be applicable if such service were purchased from a competitive service provider. The "price-to-compare" shall be the customer-specific value for the current billing month and shall be presented on the bill in a notation, as appropriate, similar to the following: **"Your regulated price-to-compare for electricity supply service in this billing period was [x.x] ¢/kWh. If you had purchased this service from the competitive market at a lower price, your current bill would have been less."** If the

customer-specific "price-to-compare" value will vary monthly, as a function of usage, seasonal rates, or fuel rate changes, the notation should include a caution, as appropriate, similar to the following: **"Your regulated price-to-compare may vary monthly due to differing usage levels and seasonal or fuel rate changes. To better evaluate competitive offers of electricity supply service, you may request estimates of your monthly, seasonal, and annual regulated price-to-compare values."**

K. The investor-owned electric local distribution company shall, upon the request of a customer that is not subject to demand-based billing charges, provide estimated monthly, seasonal, and annual customer-specific "price-to-compare" values normally based on current rates and the customer's most recent twelve months of historical usage. The investor-owned electric local distribution company shall develop and file a plan, prior to the implementation of full or phased-in retail access, with the State Corporation Commission's Division of Energy Regulation to provide "price-to-compare" assistance and information, on bills or by other means, to customers that are subject to demand-based billing charges.

L. The electric cooperative local distribution company and the natural gas local distribution company shall develop and file a plan, prior to the implementation of full or phased-in retail access, with the State Corporation Commission's Division of Energy Regulation to provide "price-to-compare" assistance and information, on bills or by other means, to all customers.

M. The local distribution company shall provide sufficient space on a consolidated bill to accommodate a competitive service provider's name and toll-free telephone number, previous account balance, payments applied since the previous billing, total current charges, total

amount due, six additional numeric fields to detail current charges, and 240 additional text characters.

N. The local distribution company shall continue to track and bill customer account arrearages owed to former competitive service providers for two billing cycles after service has terminated. The bill shall list, at a minimum, the name, toll-free telephone number, and balance due for each former competitive service provider.

O. If the current charges of a competitive service provider are not included on the consolidated bill issued by the local distribution company, the bill shall note that such charges are not included.

P. If the current charges of a competitive service provider are not included on the consolidated bill issued by the local distribution company due to causes attributable to the competitive service provider, the charges shall be billed in the following month unless the two parties mutually agree to other arrangements.

Q. If the current charges of a competitive service provider are not included on the consolidated bill issued by the local distribution company due to causes attributable to the local distribution company, the bill shall be cancelled and reissued to include such charges unless the two parties mutually agree to other arrangements.

R. The local distribution company or a competitive service provider shall report any significant deficiency regarding the timely issuance, accuracy, or completeness of customer bills to the State Corporation Commission's Division of Energy Regulation as soon as practicable. Such reports shall detail the circumstances surrounding the deficiency and the planned corrective actions.

**20 VAC 5-312-100. Load profiling.**

A. The local distribution company shall conduct its activities regarding load profiling, forecasting, scheduling, balancing, and settlement in a nondiscriminatory and reasonably transparent manner.

B. The local distribution company shall ensure that profile classes are easily identifiable, that load profiles used are representative of the customer class being profiled, and that customer loads are represented in a nondiscriminatory manner. Load profiles and load profiling methodologies shall be reviewable and verifiable by the State Corporation Commission.

C. The local distribution company shall provide a competitive service provider, through the appropriate regulatory process, access to interval data and sample data, excluding any customer-specific identifier, that is necessary to verify the validity and reliability of load profiles and methodologies.

D. The local distribution company shall use a load profiling method that balances ease of implementation with the need for the load profile to reasonably represent and predict the customer's actual use. The method used shall balance the need for accuracy, cost-effectiveness for the market, predictability, technical innovation, lead time to implement, demonstrated need for market data, and sample bias. The validity of the approach needs to be reconfirmed periodically or as markets evolve, and corresponding load profiles shall be updated accordingly and made available to competitive service providers.

E. The local distribution company shall make available to a competitive service provider the validated and edited customer class or segment load profile via a website in a read-



only, downloadable format or by other appropriate cost-effective electronic media. The information shall be date stamped with the date posted and the date created, and the website or other electronic media shall clearly indicate when updated information has become available.

F. A customer's assigned load profile shall remain the same regardless of the provider of electricity supply service. Customer loads that are not metered, such as streetlights, may be represented by load profiles deemed to closely reflect their known patterns of usage.

G. The load sample may include both customers served by the local distribution company, or the default service provider as determined by the State Corporation Commission pursuant to §56-585 of the Code of Virginia, and customers served by a competitive service provider, such that a customer is not automatically removed from the load sample when the customer begins to receive service from a competitive service provider.

H. Upon a customer's request, the local distribution company shall provide interval metering service to the customer at the net incremental cost above the basic metering service provided by the local distribution company. If the local distribution company provides interval metering as the basic metering service in accordance with its applicable tariff, interval metering of a customer's load shall continue to be required if such customer purchases electricity supply service from a competitive service provider.

I. The local distribution company shall post its distribution and transmission loss factors via the appropriate electronic methodology.

**20 VAC 5-312-110. Dispute resolution.**

A. A competitive service provider shall establish an explicit dispute resolution procedure that clearly identifies the process that shall be followed when resolving customer disputes. A copy of such dispute resolution procedure shall be provided to a customer or the State Corporation Commission upon request.

B. A competitive service provider shall furnish to customers an address and 24-hour toll-free telephone number for customer inquiries and complaints regarding services provided by the competitive service provider. The 24-hour toll-free telephone number shall be stated on all customer-billing statements and shall provide customers the opportunity to speak to a customer representative during normal business hours. Outside of normal business hours, a recorded message shall direct customers how to obtain customer assistance.

C. A competitive service provider shall immediately direct a customer to contact the appropriate local distribution company if the customer has a service emergency. Such direction may be given either by a customer service representative or by a recorded message on its 24-hour toll-free telephone number.

D. A competitive service provider shall retain customer billing and account records and complaint records for at least three years, and provide copies of such records to a customer or the State Corporation Commission upon request.

E. In the event that a customer has been referred to the local distribution company by a competitive service provider, or to a competitive service provider by the local distribution company, for response to an inquiry or a complaint, the party that is contacted second shall: (i)

resolve the inquiry or complaint in a timely fashion or (ii) contact the other party to determine responsibility for resolving the inquiry or complaint.

F. In the event a competitive service provider and customer cannot resolve a dispute, the competitive service provider shall provide the customer with the toll-free telephone number and address of the State Corporation Commission.

G. The local distribution company shall establish and file with the State Corporation Commission prior to implementation of full or phased-in retail access an explicit dispute resolution procedure to address complaints, disputes, or alleged violations of the provisions of this chapter that may arise between the local distribution company and a competitive service provider.